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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,456	12/20/2001	Kenji Kondo	5077-000079	2028

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EXAMINER

STREGE, JOHN B

ART UNIT	PAPER NUMBER
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2625

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/028,456

Applicant(s)

KONDO ET AL.

Examiner

John B Strege

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 12-15 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to:
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/8/02, 7/19/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 12-15, and 19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/23/04.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4,6, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kado et al. USPN 5,995,639 (hereinafter "Kado").

Kado discloses a method for detecting an eye position from a face image including at least an eye area (col. 1 lines 59-67), comprising the steps of:

Performing brightness correction for part or the entire of the face image to increase the contrast between a sclera portion and an iris portion of the eye (figure 14 discloses a brightness correction section 19, col. 7 lines 22-52), the contrast between the sclera portion and the iris portion would inherently be increased by the brightness correction step).

Calculating brightness gradient vectors for the brightness-corrected face image (Kado discloses using a Sobel operator to extract edge vectors with the magnitude displayed by brightness which is read as the brightness gradient vectors [col. 4 lines 45-59]).

Kado further discloses performing matching between a brightness gradient image generated using the calculated brightness gradient vectors and an eye template (col. 5 lines 40-47) and detecting the eye position based on the matching (col. 5 lines 47-57, and col. 6 lines 4-10).

Regarding claim 2, the brightness correction section as disclosed by Kado occurs after the features have been extracted, thus an edge is selected and the brightness is corrected using the edge (col. 4 lines 43-59, and col. 7 lines 23-30).

Regarding claims 3-4, as discussed Kado discloses using a Sobel operator which is a filter capable of intensifying edges.

Regarding claim 6, Kado discloses performing brightness correction on the face image following the feature extraction in which the features are split into different partial areas (col. 7 lines 26-52).

Claim 16 is similar to claim 1, thus the same arguments used for claim 1 apply equally to claim 16.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kado et al. USPN 5,995,639 (hereinafter "Kado") in view of Chen et al. USPN 6,792,134 (hereinafter "Chen").

Claim 7 is dependent on claim 6 which was rejected over Kado. Claim 7 further discloses splitting the area into right and left parts. As the face is symmetrical it is obvious that in searching for the eyes the face image can be separated into left and right parts to speed up the detection steps. Chen discloses a method for detecting the position of the eyes in which a histogram equalization is carried out (brightness correction) and the face image 904 (figure 9) is split into a left-half region 908 and a right half region 910 (col. 8 lines 35-43).

Kado, and Chen are all analogous art because they are all from the same field of endeavor of detecting the position of the eyes.

At the time of the invention it would have been obvious to one of ordinary skill in the art to split the face image into left and right section so that the eye detection may be carried out in an area half as large and thus processing time is increased. Thus it would have been obvious to combine Kado, and Chen to obtain the invention as specified in claim 7.

Regarding claim 8, Kado discloses a nose region (figure 2a) and further that a nose and mouth are present on an equidivision perpendicular line between two irises.

6. Claims 11,5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kado et al. USPN 5,995,639 (hereinafter "Kado") in view of Odaka et al. USPN 6,035,054.

Claim 11 discloses similar limitations to claim 1 (rejected with Kado) thus only the additional limitations will be discussed. Claim 11 has the added limitation that in the matching step points on the brightness gradient image corresponding to pixels of the face image having a brightness value greater than a predetermined value are excluded from correlation value calculation for the matching. As discussed Kado discloses using edge vectors which are displayed according to brightness in order to detect the areas of the face where the features are located (col. 4 lines 43-59). Kado does not explicitly disclose excluding points on the face image having a brightness value greater than a predetermined value from correlation calculation. However, the features are determined based on the correlation of edge vectors which are points of the face image with low brightness (as taught by Odaka, discussed below), thus by forming the edge vectors brightness values greater than a predetermined value (for example those values outside the edge) are excluded.

Odaka receives an image of a users eyes and detects the pupils edges (col. 18 lines 1-17). Odaka teaches that point which has been detected as an edge point is essentially a minimum luminance value (col. 20 lines 36-50). Odaka proceeds to find the true edge points by excluding any point which is not appropriately regarded as the pupil's edge by reexamining the minimum luminance value of the detected points (also

in col. 20 lines 36-50). If the luminance value is small compared to a threshold the process will proceed to subsequent steps (col. 20 lines 51-56).

Kado and Odaka are analogous art because they are both defining the edges of facial features. Based on the teaching of Odaka it is obvious that in Kado's invention, by separating the face image into edge vectors (brightness gradient vectors) the points on the face which have a greater brightness value (for example non-edges) are being excluded from the correlation process that is carried out to detect the position of the eyes (correlation process disclosed col. 5 lines 5-57).

Claim 5 discloses performing brightness correction when the calculated average brightness is smaller than a predetermined value while performing no brightness correction when it is equal to or greater than the predetermined value. Using the same argument as stated above the brightness correction is carried out on the edge vectors which represent the areas of low brightness. Thus as the brightness correction is carried out on the edge vectors it is obvious that it is only being carried out on areas lower than the average brightness of the image.

Claim 18 is similar to claim 11, thus the same arguments used for claim 11 apply equally to claim 18.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kado et al. USPN 5,995,639 (hereinafter "Kado") in view of Eriksson *Eye-tracking for Detection of Driver Fatigue* (as cited in the IDS).

Kado discloses a method for detecting an eye position from a face image including at least an eye area (col. 1 lines 59-67), comprising the steps of:

Calculating brightness gradient vectors for the brightness-corrected face image (Kado discloses using a Sobel operator to extract edge vectors with the magnitude displayed by brightness which is read as the brightness gradient vectors [col. 4 lines 45-59]).

Kado further discloses performing matching between a brightness gradient image generated using the calculated brightness gradient vectors and an eye template with multiple points (col. 5 lines 40-47) and detecting the eye position based on the matching (col. 5 lines 47-57, and col. 6 lines 4-10).

Kado does not explicitly disclose that the eye templates multiple points are arranged in n concentric circles where n is greater than or equal to 2.

Eriksson discloses a template for estimating the position of the iris which has two concentric circles a_1 and a_2 (seen in figure 3). This is effective because a good match is determined when the inner circle is centered on the iris and the outside circle covers the sclera.

Kado and Eriksson are analogous art because they are from the same field of endeavor of using eye templates to locate the eyes.

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine Kado and Eriksson to form an eye template made of two concentric circles. The motivation for doing so is that it allows for a good match to be found based on the difference between the iris and the sclera. Thus it would have been obvious to

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one of ordinary skill in the art to combine Kado and Eriksson to obtain the invention as specified in claim 9.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kado et al. USPN 5,995,639 (hereinafter "Kado") in view of Eriksson *Eye-tracking for Detection of Driver Fatigue* (as cited in the IDS) and further in view of the Applicants admitted prior art (hereinafter "AAP").

Claim 10 discloses that the face image is taken under near infrared illumination. Kado nor Eriksson explicitly disclose taking the face image under near infrared illumination.

As admitted by the applicant it is common to use near infrared light to prevent the subject of the photograph from being dazzled (page 3 lines 11-15).

Kado, Eriksson, and the AAP are analogous art because they are from the same field of endeavor of locating the eyes of a subject.

At the time of the invention it would have been obvious to one of ordinary skill in the art to use near infrared light to capture the image of the subject with the motivation being to avoid dazzling him. Thus it would have been obvious to one of ordinary skill in the art to combine Kado, Eriksson, and the AAP to obtain the invention of claim 10.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

USPN 5,905,807 Apparatus for extracting feature points from a facial image.

USPN 6,151,403 Method for automatic detection of human eyes in digital images.

Contact Information

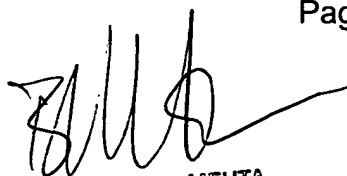
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B Strege whose telephone number is (571) 272-7457. The examiner can normally be reached on Monday-Friday between the hours of 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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